

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

CrI.MC.No. 3979 of 2006()

SC.207/2006 of SPL.COURT (NDPS ACT CASES), VADAKARA
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PETITIONERS: SURETIES

1. ABDULLA, S/O.KUNHAMAD KUTTY,
MEETHALEKANDIYIL (H),
THIRUVALLOOR AMSOM DESOM, VADAKARA.
2. KUNHAMMAD, S/O.POCKER,
THIRUVALLOOR AMSAM DESOM, VADAKARA.

BY ADV. SRI.G.KRISHNAKUMAR
SRI.ZUBAIR PULIKKOOL

RESPONDENT: COMPLAINANT

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

CrI.M.C.NO.3979 OF 2006

Dated this the 6th day of December, 2006.

ORDER

The petitioners are sureties of an accused who face indictment, inter alia, for the offence punishable under Section 436 I.P.C. The case was committed to the Court of Sessions. Subsequently after hearing the accused on the question of framing charges, the learned Sessions Judge came to the conclusion that no offence under Section 436 I.P.C is made out and therefore sent the matter to the learned Chief Judicial Magistrate under Section 228 Cr.P.C. Proceedings are pending before the learned C.J.M, submits the learned counsel for the petitioners. It is in this context that they have received Annexures-II & III notices issued under Section 446 Cr.P.C to them, directing them to show cause. The petitioners instead of appearing before the learned Sessions Judge, have rushed to this Court with this application under Section 482 Cr.P.C. According to them, they had not omitted to appear before the learned Sessions Judge and for omission to appear before the learned C.J.M, they are not liable to show cause before the Sessions Judge. This in short is the contention. Annexures-II & III do not

make it very clear as to the date on which there was failure to appear.

2. It is certainly for the petitioners to appear before the learned Sessions Judge, from whom they received Annexures-II & III notices and explain to the learned Sessions Judge their contention that, action under Section 446 Cr.P.C is not liable to be taken against them by the Sessions Court. These contentions will certainly have to be considered by the learned Sessions Judge. If there be no failure in appearance before the learned Sessions Judge, obviously proceedings under Section 446 Cr.P.C cannot be taken before the learned Sessions Judge. The petitioners can appear through their counsel and raise their contentions by filing a written statement of defence. The learned Sessions Judge must consider the same and need insist on the personal appearance of the petitioners only if such personal appearance be necessary for the progress of the case.

**R.BASANT
JUDGE**

rtr/